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THE NATION

Speedier Rate of Deportation Rulings Assailed

Ashcroft's goal to clear a backlog of immigration appeals has board members deciding cases in minutes. Increasingly, foreigners are losing.

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FALLS CHURCH, Va. -- A Justice Department overhaul of the immigration appeals system, often the last stop for people fighting deportation, has prompted a barrage of unusually fast rulings rendered without explanation -- and an outcry about noncitizens' rights to due process.

The changes, pushed by Atty. Gen. John Ashcroft, direct the beleaguered Board of Immigration Appeals to clear its 56,000-case backlog by March 25. The 23-member board, which reviews the rulings of 220 immigration judges nationwide, is often the last hope for foreigners who contend they face death, torture or other travails if forced to return to their homelands.

To meet the deadline, board members, who usually worked in panels of three and ruled after careful deliberation, are reviewing cases individually and ruling within minutes, often issuing just two-line decisions, according to a review conducted by The Times. And as the number of cases decided by the board has soared, so has the rate at which board members have ruled against foreigners facing deportation.

In turn, immigrants are appealing to the federal court system in unprecedented numbers, creating another backlog, The Times found in a survey of federal appellate courts.

Immigrant advocates say the speedup is the latest in a series of actions compromising the rights of noncitizens in the wake of the Sept. 11 attacks.

"Does it make sense? The answer is no," said T. Alexander Aleinikoff, a law professor at Georgetown University and former Immigration and Naturalization Service general counsel. "We are already seeing results: Many, many cases are decided at a speed that makes it impossible to believe they got the scrutiny a person who faces removal from the United States deserves."

A Times computer study found that the board began dramatically increasing the number of summary rulings with no elaboration soon after Ashcroft proposed the changes in February, even though the new

rules did not go into effect until Sept. 25. In March, for instance, 38% of the board's decisions were summary rulings, compared with just 9% the month before. By August, more than half the board's decisions were summary rulings, virtually all upholding the immigration judges' findings. From March 1 through Sept. 24, board members separately issued 16,275 decisions without explanation.

The denial rate has risen in tandem, The Times found. The board rejected 86% of its appeals in October, compared with 59% the previous October.

"From our perspective, streamlining reforms is working and doing precisely what the reforms were intended to do," said Susan Eastwood, a spokeswoman for the Executive Office for Immigration Review, the Justice Department agency that oversees the appeals board. "Appeals are being adjudicated in a timely manner and are carefully considered to ensure that each appellant receives due process."

Immigrants in the system have violated some U.S. immigration law -- perhaps illegally entering the country for economic reasons or to seek political asylum; overstaying a visa or committing a crime -- and already have been turned down by an immigration judge. Many do not have lawyers.

They can appeal to the Board of Immigration Appeals, whose members may have little background in immigration law. If immigrants lose there, they can appeal to federal district courts, but that can be expensive; most don't take their cases that far.

The system has long been considered slow and inefficient, enabling illegal immigrants to postpone deportation for months or even years. But the fast pace of recent decision-making has startled even some of those who think the board needed an overhaul.

A Times review of appeals board decisions indicates that some members are dispensing justice at a brisk pace. On Oct. 31, Frederick Hess, a member of the Board of Immigration Appeals, signed more than 50 cases -- a decision nearly every 10 minutes if he worked a nine-hour day without a break.

Edward Grant, Hess' colleague, signed more than 50 cases that same day, The Times found. Altogether that day, the board issued nearly 400 decisions, ranging from complex asylum cases to simple jurisdictional matters.

The Justice Department, contending it is not tracking how many cases each board member is reviewing, says it is unfair to count the number of cases a board member signs each day because that date "reflects the date the case was mailed to the parties," not necessarily the date it was decided. But board members privately do not dispute The Times' findings that some members are deciding as many as 50 cases a day. Neither Hess nor Grant agreed to comment.

Close observers of the process say that although some cases can be decided quickly, the current pace is surprising.

"I think that's a lot of cases to do in a day. We're talking minutes," said Fred Vacca, who was appointed to the board by President Reagan and who retired last year after 20 years. "I hope these decisions go out correctly and we don't trample on people's rights."

For many individuals caught in the system, the lack of explanation offered by the appeals board is a source of frustration.

"I've talked to people who know about immigration laws, and nobody seems to know why this is happening to me," said Freddy Larrea, a substance-abuse counselor in Boston who faces deportation.

Larrea, who came from Colombia in the 1980s and is married to an American, argues that he has met a 10-year residency requirement and deserves legal status.

On Sept. 6, board member Kevin Ohlson turned down his plea without explanation. "There's no way of knowing whether he read the file," said Larrea's lawyer, Ilana Greenstein, who is appealing the case in the U.S. 1st Circuit Court of Appeals.

Immigrant advocates also contend that details of legal significance are being overlooked in the scramble to reduce the backlog.

An immigration judge in Los Angeles, for example, ordered the deportation of Prakong Phunta Thanthima, a seamstress from Thailand who was one of 72 individuals dubbed slaves by the INS in a 1995 El Monte case that gained international notice. The reason for the deportation: She had missed a court appearance. She was a no-show, however, because the immigration court had sent her notice to the sweatshop, which had already closed, instead of to her address in Syracuse, N.Y., even though the correct address was on file with the INS.

In November, appeals board member Hess ruled that Thanthima should have notified the court as well as the INS of her address; he issued a two-paragraph decision rejecting her appeal. He did not mention that the original notice of a possible hearing left blank the court's own address; it was apparently filled in above her signature several years later.

"How could they uphold something like that?" asked her attorney, Edward Luban. "I get the sense from reading the decision that they didn't read the record."

Thanthima, 32, has lived in the U.S. for 10 years. Employed as a seamstress in an automotive reupholstering shop, she is now married to an American and has a 4-year-old daughter and a second child on the way.

"It's unfair. The system is unfair," she said in an interview. "I like America. I don't want to go back to Thailand."

She may yet escape deportation. Prosecutors had promised the El Monte victims special immigration status for helping the INS investigate the sweatshop. When federal prosecutors in Los Angeles learned of the decision to deport her, they asked the INS to reopen the case with the board.

In the meantime, her lawyers have appealed to the U.S. 9th Circuit Court of Appeals. "I think this is the classic example of the errors Ashcroft has forced the [Board of Immigration Appeals] to make," said Tom Hutchins, one of her attorneys.

The growing number of appeals filed in the federal court system has been most severe in the 9th Circuit, which includes California and much of the West. Court Clerk Cathy Catterson expects immigration cases in 2002 may exceed 3,000, nearly triple that of 2001.

So many new immigration appeals are pouring in -- 150 a week in recent months -- that the 9th Circuit is automatically issuing temporary stays of all deportation orders, defeating the intent of Ashcroft's rules to resolve cases more quickly.

In the 5th Circuit, which covers Louisiana, Mississippi and Texas, the Justice Department sought more time to answer the increasing number of immigration appeals, but the judges there refused. The department told court clerks that they could not keep up with the paperwork demands to respond to the

appeals. "They have a big backlog. They asked for additional time," said clerk Charles Fulbruge. He said the court could handle the caseload for now, but not necessarily the future. "Every time we have an increase in workload, there's a problem," he said. "We'll just have to see how long it takes for these cases to get through the system."

One Justice Department official said he expected the federal courts to ship back to the immigration appeals board some of the hastily decided cases.

"You can't just wave a wand on this backlog and have it disappear," he said.

The Justice Department also plans to cut the Board of Immigration Appeals in half -- from 23 members to 11 -- once the backlog is reduced, even though Ashcroft had expanded the board in 2001.

The pending cutback has focused acute pressure on individual board members to process cases swiftly. Ashcroft has said that productivity -- broadly, the number of rulings each board member makes -- is one of the factors he will consider in determining who stays on the board.

As some critics see it, the cutback looms as a threat to any board member who would speak out against the Justice Department and its increasingly tough approach toward immigrants.

"To me, this is a thinly veiled political threat," said Jeanne Butterfield, executive director of the American Immigration Lawyers Assn., which has filed suit with the Capital Area Immigrants' Rights Coalition to rescind the new rules.

The lawsuit contends that the Justice Department rammed through its changes while virtually ignoring dozens of written complaints from immigration experts that the new rules would lead to "erroneous decision-making." It also estimates that board members will have on average just 15 minutes to review a case.

The Justice Department dismisses those concerns, saying that "pure mathematical formulas are deceptive." It says the board has been streamlining immigration cases for more than a year, increasing its output from 1,800 cases a month in 2000 to more than 5,200 cases more recently under the new rules.

"I think we are still providing adequate review," one appeals board member said. "It's just that when only one person decides a case instead of three, there's a lot more potential for errors." The member did not want to be identified for fear of being removed by Ashcroft in March.

But Lory Rosenberg, who left the board in October after serving for seven years as one of its most liberal members, said the emphasis is placed on speed, not legal precision. The board's staff attorneys -- who assess the legal evidence, propose a decision and then present it to panel members for approval -- are encouraged to work fast, she said.

"What are they rewarded for?" Rosenberg asked. "Not for finding the one case in which the judge decided wrong and saving someone from being sent back to a place in which they might be killed. They're rewarded for numbers."

Judge Stephen Reinhardt of the U.S. 9th Circuit Court of Appeals said in an October speech to refugee law judges in New Zealand: "Many observers fear that judges who have been most sympathetic to the plight of refugees and immigrants will be targeted for dismissal."

Insiders say the mood inside the appeals board is somber. Two board members have recently left, one

member is moving to management and four seats are open. That still leaves five members whose jobs will be cut to reach Ashcroft's goal of 11.

Daniel Kowalski, an immigration lawyer in Austin, Texas, and editor of Bender's Immigration Bulletin, said the appeals board was created in 1940 as a watchdog over immigration courts.

The proliferation of decisions without explanations, he said, "radically devalues what the Board of Immigration Appeals was designed to do, which was to provide an independent, in-depth appellate review of an immigration judge's decision. That's been converted into a rubber stamp."

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Times staff writer Robert Patrick contributed to this report.

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